

NTSB Order No. EA-5073

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 5th day of January, 2004

Docket SE-16605

<sup>1</sup> The decisional order is attached. Respondent timely filed an appeal brief and the Administrator filed a reply. Respondent then filed a "Traverse to The Administrator's Brief." Our rules provide for subsequent filings only to identify "new and relevant legal authority, and not to correct omissions in briefing or to respond to a reply brief." See 49 C.F.R. § 821.48(d). Otherwise, no further briefs may be submitted without specific permission from the Board and a showing of good cause. No such

By that decision, the law judge found that there were no genuine issues of material fact in dispute, and that the record supports revocation of respondent's Airline Transport Pilot (ATP) certificate pursuant to 49 U.S.C. § 44710(b)(1).<sup>2</sup> The law judge found that evidence submitted with the motions, along with the admissions of both respondent and co-conspirators, sufficiently support the Administrator's finding that respondent utilized an aircraft in the commission of criminal offenses involving a controlled substance (cocaine), for which respondent was

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(..continued)

permission was obtained or showing made here. As such, we will not consider respondent's additional brief.

<sup>2</sup> On August 13, 2002, Administrative Law Judge William E. Fowler, Jr., issued an order granting in part and denying in part the Administrator's Motion Deeming Allegations Admitted and for Judgment on the Pleadings, specifically finding a violation of section 61.15(a)(2) of the Federal Aviation Regulations (FAR), 14 C.F.R. § 61.15(a)(2). Respondent has not appealed that issue. The law judge further determined, however, that judgment on the pleadings was not appropriate regarding the charge under 49 U.S.C. § 44710(b)(1), in that respondent had not admitted the allegation and there were insufficient facts before the judge at that point to establish the violation.

Title 49, United States Code, Section 44710(b)(1), reads:

(b) Revocation.—(1) The Administrator of the Federal Aviation Administration shall issue an order revoking an airman certificate issued an individual under section 44703 of this title after the individual is convicted, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), of an offense punishable by death or imprisonment for more than one year if the Administrator finds that—

(A) an aircraft was used to commit, or facilitate the commission of, the offense; and

(B) the individual served as an airman, or was on the aircraft, in connection with committing, or facilitating the commission of, the offense.

convicted. As discussed below, we deny the appeal.

Respondent was convicted in United States District Court for the Southern District of Florida of several drug-related offenses and is currently serving a life sentence in federal prison. Specifically, respondent was found guilty on one count of participating in a continuing criminal enterprise, in violation of 21 U.S.C. § 848; two counts of conspiracy to import cocaine, in violation of 21 U.S.C. § 963; one count of conspiracy to attempt to conduct financial transactions which involved the proceeds of illegal drug activity, in violation of 18 U.S.C. § 371; and two counts of attempting to engage in the aforementioned financial activity, in violation of 18 U.S.C. 1956(a)(1)(B). The crimes for which respondent was convicted occurred from 1985 to 1990. See Administrator's Motion for Summary Judgment, Exhibits (Exs.) A and F.

Section 44710(b)(1) *requires* the Administrator to revoke an airman's certificate when the airman has been convicted of certain drug-related offenses, and the Administrator finds that an aircraft was involved and the certificate holder served as an airman or was on the aircraft during the commission of the offense. Respondent argues that the offenses for which he was convicted did not involve an aircraft. His categorical denials are insufficient to defeat a summary judgment motion, however. Respondent, by his own admission in television interviews, letters to the FAA, and to federal district court judges, stated that he utilized aircraft during the time period at issue to

smuggle illegal drugs. See Administrator's Motion for Summary Judgment, Exs. B, C, D, E. He argues, however, that those admissions do not apply to the acts for which he was convicted, and that he participated in drug-smuggling flights with the permission of various federal government agencies.

The testimony and evidence introduced at his criminal trial support the Administrator's conclusion that an aircraft was utilized in the commission of the drug-related offenses and respondent was on board or served as an airman on the aircraft in connection with facilitating the broad offenses for which he was convicted. See Administrator's Motion for Summary Judgment, Exs. A, F, G. Further, even if respondent's repeated claims that he was granted transactional immunity for years of drug smuggling activity were supported by evidence in the record, this is not the proper forum to adjudicate that issue. The Board's proceedings may not be used for the purpose of collaterally attacking his convictions. See, e.g., Administrator v. Kratt, NTSB Order No. EA-4917 at 4-5 (2001), and cases cited therein.

Respondent has identified no error in the law judge's order granting summary judgment.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The law judge's order granting summary judgment is affirmed;
3. The Administrator's order revoking respondent's ATP certificate is affirmed; and
4. The revocation of respondent's certificate shall begin 30 days after the service date indicated on this opinion and order.<sup>3</sup>

CONNORS, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.

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<sup>3</sup> For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).